

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Wickfire, LLC,

Plaintiff,

v.

TriMax Media, Inc., Laura Woodruff, WREI,
Inc., and Josh West,

Defendants.

CIVIL ACTION NO: 14-CV-34

TriMax Media, LLC, Laura Woodruff, WREI,
Inc., and Josh West,

Counter-Plaintiffs,

v.

Wickfire, LLC, Jonathan Brown,
and Chet Hall,

Counter-Defendants.

Response to the Amended Partial Motion to Dismiss

TriMax Media, LLC (“**TriMax**”), Laura Woodruff, WREI, Inc., and Josh West (collectively, the “**TriMax Parties**”) file this response to the amended partial motion to dismiss of Wickfire, LLC (“**Wickfire**”), Jonathan “Jon” Brown, and Chester “Chet” Hall (collectively, the “**Wickfire Group**”) ([Docket No. 140](#)).¹

¹ TriMax files this response to Wickfire’s Amended Partial Motion to Dismiss. After meeting and conferring on the TriMax Parties’ motion to strike the evidence attached to the original motion or to convert that motion to a motion for summary judgment, the parties agreed to file an amended motion and response in order to narrow the issues before the Court and avoid additional motion practice. Both parties are grateful for the Court’s continued attention to this matter and will endeavor to resolve as many issues as possible between counsel, without Court involvement, as this case moves forward.

INTRODUCTION

When considering a motion under Federal Rule of Civil Procedure 12(b)(6) or 12(c), only the pleadings are relevant. Thus, the TriMax Parties incorporate paragraphs 5 – 28 from the TriMax Parties’ Omnibus Counterclaims (the “**Counterclaims**”) ([Docket No. 133](#)), as summarized below.²

In 2011, Chet Hall and Jon Brown formed Wickfire and in 2012, they began running search-engine advertising campaigns on a pay-for-performance basis. In the months that followed, Wickfire struggled to learn the intricacies of the pay-for-performance search-engine marketing industry. While Chet Hall and Jon Brown had worked in search-engine advertising prior to forming Wickfire, their experience was with the company Reach Local and that experience did not translate to the pay-for-performance realm. In contrast to the industry in which they had cut their teeth, success in the pay-for-performance niche depends on ad quality and a deep understanding of advertising and marketing. Instead of learning to draft quality ads and operate ethically in the pay-for-performance realm, Wickfire attempted to remake the industry in the image of Reach Local, seeking exclusivity with merchants by, among other things, (1) giving kickbacks to OPMs (a middleman in the industry) for removing TriMax and other search partners from Programs, (2) making misrepresentations about competitors in order to obtain this exclusivity, and (3) committing click fraud. But this was not enough. Wickfire devoted immense resources to develop a system that would prohibit other Search Partners from advertising for a Merchant.

In November 2012, approximately one year after its formation, Wickfire implemented an automated program that allowed Wickfire to eschew all efforts to improve

² Terms not otherwise defined herein shall have the definitions assigned in the Counterclaims.

their product or benefit consumers. With this automated program—and even with a substandard product—Wickfire was able to drive competitors, such as TriMax, to abandon campaigns and the industry. Wickfire’s behavior has had far reaching effects on both Wickfire’s competitors (such as TriMax) and its alleged customers. The only entity that benefits from Wickfire’s unbridled “competition” is Wickfire itself. Based on this conduct, the TriMax Parties assert many claims against the Wickfire Group in the Counterclaims, including the attempted-monopolization claim that the Wickfire Group challenges in the Motion.

To state an attempted-monopolization claim, an antitrust plaintiff must show three things: (1) that the defendant engaged in predatory, anticompetitive or exclusionary conduct with (2) a specific intent to monopolize and (3) that the scheme has a dangerous probability of success.³ The Wickfire Group effectively concedes (through silence) in the Motion that its conduct is predatory and anticompetitive, challenging only a single aspect of TriMax’s antitrust claim: the market definition. But, as shown below, the Counterclaims contain more than sufficient allegations regarding the relevant market, and these allegations are reinforced by Wickfire’s own allegations in its Complaint.

The TriMax Parties believe that the allegations in the Counterclaims are more than sufficient to withstand the challenges lobbed by Wickfire. But in just the last few weeks, TriMax has uncovered damning evidence that proves the devastating impact of Wickfire’s unethical practices: a Search Partner named Michael Ramsaur. Mr. Ramsaur’s business was decimated by Wickfire’s practices and in early 2014, he pleaded with Wickfire, Google, and the Networks to stop Wickfire’s unethical tactics. Mr. Ramsaur’s pleas went unanswered and he fell into despair. Just days after a Network told him that they could not remedy Wickfire’s conduct, Mr. Ramsaur resorted to sui-

³ *Taylor Publ’g Co. v Jostens, Inc.*, 216 F.3d 465, 474 (5th Cir. 2000).

cide. The discovery of Mr. Ramsaur has led TriMax to other Search Partners targeted and affected by Wickfire. In the unlikely event that the Court determines that the Counterclaims are insufficient, the TriMax Parties request an opportunity to amend the Counterclaims to incorporate this newly-discovered evidence and evidence that Wickfire has yet to produce.

ARGUMENTS AND AUTHORITIES

A. The Counterclaims need only contain a short and plain statement regarding the relevant market and need not contain detailed allegations.

Whether considered as a 12(c) motion for judgment on the pleadings⁴ or a motion to dismiss under Rule 12(b)(6), the same standard applies.⁵ Both are disfavored in the law.⁶ This is especially true with respect to antitrust claims because those claims are “often complex and fact-intensive . . . In many antitrust cases the type of detailed information necessary to ultimately prove a claim is in the possession of the defendant. For this reason, ‘dismissals prior to giving the plaintiff an ample opportunity for discovery should be granted very sparingly.’”⁷

⁴ The Wickfire Group filed the motion *after* it filed its answer. Arguably, this means that it must be treated as a motion for judgment on the pleadings under Rule 12(c) and not a motion to dismiss under Rule 12(b)(6). *See, e.g., King v. HSBC Bank USA, N.A.*, No. SA-12-CV-592-XR, 2012 WL 3204190, at n. 4 (W.D. Tex. Aug. 3, 2012) (The proper vehicle for asserting failure to state a claim was Rule 12(c) since party had already filed an answer, so court treated party’s Rule 12(b)(6) motion as a Rule 12(c) Motion).

⁵ *Ackerson v. Bean Dredging, LLC*, 589 F.3d 196, 209 (5th Cir. 2009) (internal quotations omitted).

⁶ *Mahone v. Addicks Utility District of Harris County*, 836 F.2d 921, 926 (5th Cir. 1988). “Federal Rule of Civil Procedure 8(a)(2) requires only a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests . . . it does not require ‘detailed factual allegations.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

⁷ *Electronic Data Systems v. Computer Associates*, 802 F. Supp. 1463, 1467 (N.D. Tex. 1992) (quoting *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 746 (1976)). Moreover, antitrust cases are not subject to a heightened pleading standard. *Wampler v. Southwestern Bell Telephone Co.*, 597 F. 3d 741, 744 (5th Cir. 2010).

Courts considering motions under Rules 12(c) and 12(b)(6) focus “on the allegations in the pleadings and not on whether the plaintiff actually has sufficient evidence to succeed on the merits.”⁸ The central issue “is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief.”⁹ This determination is “context-specific,” requiring the Court “to draw on its judicial experience and common sense.”¹⁰ “In other words, a claim may not be dismissed based solely on a court’s supposition that the pleader is unlikely ‘to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder.’”¹¹

B. The TriMax Parties’ Omnibus Counterclaims contain market allegations that satisfy the applicable pleading standards.

The Wickfire Group challenges the TriMax’s allegations related to the relevant market. “Whether a relevant market has been identified is usually a question of fact.”¹² The “relevant market” contains two subparts: the “geographic market” and the “product market.”

1. The pay-for-performance search-engine marketing industry is a sufficiently-pled product market.

In ascertaining the relevant product market, courts traditionally cite to whether the seller’s product is “interchangeable in use” and the degree of “cross-elasticity of de-

⁸ *Ackerson*, 589 F.3d at 209.

⁹ *E.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), *Hughes v. Tobacco Inst., Inc.*, 278 F.3d 417, 420 (5th Cir.2001) (citing *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 440 n. 8 (5th Cir.2000)).

¹⁰ *Id.*

¹¹ *Mason v. Bank of Am., Nat. Ass’n*, 4:12CV291, 2013 WL 1313773, at *1 (E.D. Tex. Feb. 25, 2013), *appeal dismissed* (Sept. 18, 2013), *report and recommendation adopted*, 4:12CV291, 2013 WL 1313769 (E.D. Tex. Mar. 28, 2013)

¹² *Apani Southwest, Inc. v. Coca-Cola Enterprises*, 300 F. 3d 620, 626 (5th Cir. 2002).

mand between the product itself and substitutes for it.”¹³ But search-engine marketing is not a traditional “product” and the traditional analysis is not useful.

Within the product market, there may exist submarkets which, in themselves, represent product markets for antitrust purposes.¹⁴ “The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product’s peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.”¹⁵ Product market definition generally presents a question of fact for the jury.¹⁶

The TriMax Parties’ product definition, contained in paragraph 24.3 of the Counterclaims, is: “pay-for-performance search-engine advertising market.” ([Docket No. 133 at 31](#).) This definition is supported by additional factual allegations in paragraphs 5.1 – 5.3 and 6.1 – 6.5 of the Counterclaims. ([Docket No. 133 at 8 – 9](#).) The Motion does not cite to the TriMax Parties’ product definition at all. Instead, the Wickfire Group cites to allegations in the Counterclaims that are inapplicable to the product-market definition.

In contrast to its arguments in the motion to dismiss, Wickfire alleged in the Third Amended Complaint (the “**Complaint**”) that “the business space where Plaintiff Wickfire and Defendant TriMax [exist] is relatively small. Eliminating a single competitor would [] alter[] the competitive landscape dramatically.” ([Docket No. 78 at 2 ¶ 4](#).) Wickfire’s Complaint explains that, while internet advertising is a “large and fast grow-

¹³ *C.E. Servs., Inc. v. Control Data Corp.*, 759 F.2d 1241, 1245 (5th Cir.1985) (citing *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962)).

¹⁴ *Heattransfer Corp. v. Volkswagenwerk, A. G.*, 553 F.2d 964, 980 (5th Cir.1977) (citing *United States v. E.I. duPont de Nemours & Co.*, 353 U.S. 586, 593-595 (1957)).

¹⁵ *Heattransfer Corp.*, 553 F.2d at 980 (quoting *Brown Shoe Co.*, 370 U.S. at 325).

¹⁶ *Dimmitt Agri Indust., Inc. v. CPC Int’l, Inc.*, 679 F.2d 516, 525 (5th Cir.1982).

ing business” ([Docket No. 78 at 5](#) ¶ 19), Wickfire’s business exists in a much narrower niche: third-party management of search engine advertising ([Docket No. 78 at 6](#) ¶ 21) where advertisers are paid only if their advertisements result in sales to a merchant ([Docket No. 78 at 9](#) ¶ 28 – 29). This is precisely the market definition provided in the Counterclaims. ([Docket No. 133 at 31.](#))

The Motion does not challenge the product market as it is defined in the Counterclaims and, therefore, the Court should reject Wickfire’s challenge to this element of the attempted-monopolization claim.

2. The United States is a sufficiently-pled geographic market.

Courts focus on the area of “effective competition” in determining the relevant geographic market.¹⁷ The geographic market must “correspond to the commercial realities’ of the industry and ‘be economically significant.’”¹⁸ “Thus, although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area.”¹⁹ “When determining whether a geographic market corresponds to commercial realities, courts have taken into account practical considerations such as the size, cumbersomeness, and other characteristics of the relevant product.”²⁰ “Whether a relevant market has been identified is usually a question of fact.”²¹ When courts analyze the defined geographic market on a motion to dismiss, it is in situations where a plaintiff has attempted to “artificially narrow a broader economic market.”²²

¹⁷ *Jim Walter Corp. v. F.T.C.*, 625 F.2d 676, 682 (5th Cir.1980).

¹⁸ *Brown Shoe Co.*, 370 U.S. at 336-337.

¹⁹ *Id.* (citation omitted).

²⁰ *Apani*, 300 F. 3d at 626.

²¹ *Id.*

²² *Id.* at 633; *see also Besser Publishing Co. v. Pioneer Press, Inc.*, 571 F.Supp. 640 (N.D.Ill. 1983)

The TriMax Parties define the geographic market to include the entire United States. ([Docket No. 133 at 31](#) ¶ 24.2.) Wickfire argues that the TriMax Parties did not sufficiently allege facts to support this definition because it does not include allegations regarding “transportation costs, delivery limitations, customer convenience and preference, and the location and facilities of other producers and distributors.” ([Docket No. 135 at 7.](#)) But these factors are wholly inapplicable here: there are no transportation costs, delivery limitations, or physical locations for distribution. The “product” at issue is an advertisement that can be created from anywhere and exists only on the internet. At the very least, the geographic market is the United States but further discovery is required to determine whether it may extend internationally.

3. The allegations are sufficient to show that Wickfire had sufficient market share in the relevant market.

The Wickfire Group argues that the TriMax Parties have failed to include allegations about “Wickfire’s size within the market or its market share.” ([Docket No. 140 at 10.](#)) But, as shown below, this argument is rife with contradictions against the Wickfire Group’s own Complaint and misdirection (*i.e.*, pointing the Court toward the internet advertising industry at large, rather than the specific pay-per-performance market pled by the TriMax Parties).

Courts “do not set strict mathematical standards regarding the level of market power which must be shown; in any given case, the question whether the association has the requisite power may turn on a number of different factors relevant to the structure of the market.”²³ “[The] absence of large market share in the relevant market does

(granting a motion to dismiss for failure to properly allege a geographic market when the plaintiff defined the geographic market as including areas where defendant did not compete, and the geographic definition included such generalities as “less-than-metropolitan area-wide market”).

²³ *United States v. Realty Multi-List, Inc.*, 629 F.2d 1351, 1373 (5th Cir. 1980).

not require dismissal of a claim of monopolization or attempt to monopolize.”²⁴ “Courts should be wary of the numbers game of market percentage when considering attempt-to-monopolize claims.”²⁵ “The far wiser approach, which this circuit has observed if not explicitly adopted, is . . . where the issue of market power was decided by carefully analyzing certain telltale factors in the relevant market: market share, entry barriers and the capacity of existing competitors to expand output. We see no reason to depart from this mode of analysis.”²⁶

Wickfire’s argument is based on a disingenuous sleight-of-hand. In its Motion, Wickfire argues that the Industry is so large that Wickfire’s business is practically inconsequential. ([Docket No. 140 at 11.](#)) However, this is in direct contradiction to Wickfire’s own pleading that “[t]he business space where Plaintiff Wickfire and Defendant TriMax is relatively small. Eliminating a single competitor would have altered the competitive landscape dramatically. Similarly, reputation is paramount because the small number of industry players routinely share information.” ([Docket No. 78 at 2 ¶4.](#))

Wickfire cannot have it both ways. It cannot pretend that the industry is small for the purposes of its own claims and then argue that it is enormous for the purposes of the TriMax Parties’ Counterclaims. “[A] party should not be permitted to abuse the judicial process by obtaining one recovery based first on affirming a certain state of facts, and then another recovery based on denying the same set of facts.”²⁷

The TriMax Parties made extensive factual allegations related to Wickfire’s ability to monopolize the industry and its intent to do so. (See, e.g., [Docket No. 133 at ¶¶ 5.1](#)

²⁴ *All Star Carts & Vehicles, Inc. v. BFI Canada Income Fund*, 596 F. Supp. 2d 630, 641 (E.D.N.Y. 2009).

²⁵ *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1438 n.10 (9th Cir. 1995).

²⁶ *Id.* at 1438.

²⁷ *Metroflight, Inc. v. Shaffer*, 581 S.W.2d 704, 709 (Tex. Civ. App.—Dallas 1979, writ ref’d n.r.e).

– 5.3, 6 – 28.) And Wickfire’s own Complaint includes sufficient allegations related to Wickfire’s market share. Because the Counterclaims sufficiently allege the Wickfire Group’s market share and intent to monopolize, the Court should reject its challenge to this aspect of the attempted-monopolization claim.

C. Even if the market allegations in the Counterclaims were insufficient, the TriMax Parties are prepared to amend the Counterclaims with recently-obtained information.

In the event that the Court determines that the current allegations in the Counterclaims are insufficient, the TriMax Parties are prepared, though they believe it is unnecessary, to replead and incorporate additional, newly-discovered evidence to support their Sherman Act claims. This includes evidence from the deposition of Chet Hall as Wickfire’s corporate representative, where Mr. Hall explained that few Search Partners are willing to work on a pay-for-performance basis. *See Exhibit 1*, Transcript Excerpts from the Deposition of Chet Hall at 92:22 – 93:23, 103:24 – 104:8, and **Exhibit 1-106**, Screenshot of Wickfire’s Website “Pay for Performance FAQs”. It would also include new evidence obtained from subpoenas issued by the TriMax Parties to third-parties.

In the spring of this year, the TriMax Parties issued many third-party subpoenas seeking evidence related to their antitrust claims. These subpoenas sought information and data to support what the TriMax Parties believed was occurring but could not prove solely from their own data. In the weeks after filing the Counterclaims TriMax, the puzzle pieces have begun to fall into place and the TriMax Parties have found much additional evidence to support their claims. This evidence includes brand new evidence about a Search Partner, Michael Ramsaur. Previously, the TriMax Parties had evidence that at least one Search Partner had complained to Wickfire about its activities but the TriMax Parties had thus far been unable to corroborate this Search Partner’s experi-

ence. See **Exhibit 1**, Transcript Excerpts from the Deposition of Chet Hall at 379:13 – 381:16 and **Exhibit 1-606**, e-mail dated February 7, 2014, from Jon Patrick to Chet Hall (“Your maneuverings with your site thecoupon.co can not be allowed to persist. It’s not necessary to go into details as you know what I’m talking about (huge CPC increase, fraudulent click, etc. . .) I’m not sure Google and [the] affiliate networks would be happy to hear how you use their service. You definitely infringe a few Google rules and you know they don’t like that kind of thing.”).

In just the last few weeks, the TriMax Parties have uncovered evidence related to Mr. Ramsaur, his experience with Wickfire, his attempts to mitigate the harm caused to his business, and the devastating effect that Wickfire’s conduct had on Mr. Ramsaur. This evidence includes e-mails between Mr. Ramsaur and Brian Littleton, the founder and CEO of the Network ShareASale, the first of which was from Mr. Ramsaur on February 28, 2014, and is directly below. The entire e-mail chain is attached as **Exhibit 2-A**.

Michael Ramsaur

USER

Posted on: 28 Feb 2014 03:19 PM

Hi,

I have been experiencing really bad click fraud from one of your affiliates that has cost me well over \$10,000 and I have reached my breaking point.

His name is Chet Hall

E-mail - chet@wickfire.com
Website - thecoupon.co

Instead of trying to outbid you like everyone else when your ad is showing, he will place one of his thecoupon.co ads below your ad so you end up paying over \$1.00/click when you were only paying 0.20/click the day before. Sometimes I ended up paying \$30/click! The ad is only meant to artificially raise your clicks, it is not a legitimate ad. Once you stop your ad, he stops his coupon ad, so his direct linking ad starts showing again. He stops his coupon ad, because he doesn't want to pay \$5/click either. He knows no one can make a profit with these types of ridiculous click prices. He is monopolizing most of the open trademark ads/keywords. He has an automated system, so when you outbid him and your ad starts showing up, his coupon ad will automatically show below your ad and you have to pay over \$1.00/click. He is not only doing this on SAS, but also CJ and LinkShare. I e-mailed him and asked him to stop doing what he is doing and he has never stopped.

It's not fair that one affiliate is monopolizing the entire open trademark/keyword marketplace. It would be different if he were using the regular Adwords bidding system to do it, but he's using click fraud to do it. These coupon ads are not meant to make money, just to force other affiliates to pay higher click rates. This is happening to other affiliates as well.

I have attached some screenshots of my click rate prices on Google and how they went up after he did this to me. If you type in the Nerd Block on Google, you will notice he has the ad

without his coupon ad showing. I had to pause mine last night, because he had his coupon ad below me. He is using his automated system to defend his direct ads, so no other affiliate can outbid him. I am hoping you can do something about this as soon as possible. I admit that I did what he did to me a few times out of complete frustration after I figured out what he was doing to me. I have decided to never do it again, because I don't want to resort to dirty tactics to compete. Below is Chet's response to me when I contacted him about the situation. He admits to what he is doing.

Hi Mike,

I'm a big believer in trying to build cordial relationships with competitors, since this is a very small professional space and you never know what circumstances you're going to meet someone in in the future.

I apologize if you feel like there's a PPC war going on. We're not fighting any wars on our end. We're not targeting you personally in any fashion, and other than the campaign list you've sent, I don't have any information about your company or know how we'd identify your ads in search engines.

Our bidding systems are automated, and don't (and won't) use any proscribed methods to compete with other affiliates, though we do spend a lot of time doing data analysis and refining our logic.

Your comment "That's how this game works, \$1000 bids win the ad," is definitely not one that abide by, and seems to me to be a perversion of Google's paid search auction model. Not to say that we haven't tried it, but we were eventually forced us to change our search strategies because of the huge amount of highly-effective click fraud we started seeing from certain other affiliates when we overbid on keywords in that manner.

We do utilize non-direct linked ads on keywords which historically have not had them, and that added competition to those key keyword marketplaces is exactly what was necessary to prevent affiliate overbidding and remove the huge incentive for affiliate click fraud. Even as we began utilizing our own landing pages, instead of focusing solely on direct search, we have seen many hundreds of clicks per day from certain affiliates who basically seem to treat click fraud as a full time occupation. Given that, we entirely stopped overbidding on keyword terms, which historically has been pretty common in this space.

As far as the campaign list you sent goes, we currently manage over a thousand paid search campaigns and trying to divvy up affiliate real estate when neither of us owns anything and there are thousands of other affiliates involved isn't realistic.

Good luck,

Chet

The correspondence between Mr. Ramsaur and Mr. Littleton continued for months, ending on April 9, 2014, when Mr. Littleton stated:

Brian Littleton

STAFF

Posted on: 09 Apr 2014 12:08 PM

Mike,

There isn't anything we can do here on this in the short term. We may research and come up with policy in the future, but in the interim it is my opinion that this is an issue for Google to deal with as we cannot control how publishers bid using their tool.

Thanks,

Brian Littleton
ShareASale.com

As soon as the TriMax Parties received this evidence, they attempted to contact Mr. Ramsaur but soon learned that, just days after he received the April 9 e-mail, Mr. Ramsaur tragically resorted to suicide. *See Exhibit 2*, Declaration of Jo Ann Ramsaur. The TriMax Parties reached out to Mr. Ramsaur's mother, Jo Ann Ramsaur, who is herself a Search Partner. Ex. 2 ¶3. Mrs. Ramsaur has signed a declaration, which is attached as Exhibit 2, stating that Wickfire destroyed Mr. Ramsaur's business and that Mr. Ramsaur believed "he had no means for generating a livable income." Ex. 2 ¶9. According to Mrs. Ramsaur, "[b]eing forced out of the only business he knew caused Michael to slip into despair." *Id.*

Mrs. Ramsaur has also revealed that her own campaigns have been affected by Wickfire's tactics. The TriMax Parties are working with Mrs. Ramsaur and other Search Partners to further investigate the impact Wickfire has had on their businesses. This includes investigating evidence from Mr. Ramsaur's Google AdWords accounts, which will reveal exactly how Wickfire targeted and affected Mr. Ramsaur.

Conclusion

For the foregoing reasons, the TriMax Parties request that the Court convert the 12(b)(6) motion to dismiss into a motion for judgment under Rule 12(c), and then either convert it to a motion for summary judgment and stay disposition of that motion until after further discovery has been completed. In the alternative, if the Court considers the motion to dismiss, the TriMax Parties request that the Court strike the evidence attached to the Motion and deny the Motion in its entirety.

Date: August 12, 2015

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the August 12, 2015, a copy of the foregoing was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on all parties registered to receive such service, including the following:

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Case	Wickfire v. TriMax
Issue Code	Exhibit to TriMax's Response to Motion to Dismiss

HALL, CHESTER 6/3/15 VOL 1		
1	092:22 - 093:23	<p>092:22 Q. Okay. And when you formed Wickfire, LLC, did</p> <p>23 you know of any other companies that were doing this</p> <p>24 type of work?</p> <p>25 A. The way that I've just described it, no, not --</p> <p>093:01 not -- not precisely like it.</p> <p>02 Q. Okay. You said "not precisely like it." Did</p> <p>03 you know that -- of companies that were doing similar</p> <p>04 type?</p> <p>05 A. Well, I mean, if you Google --</p> <p>06 MR. COBURN: Objection; vague.</p> <p>07 THE WITNESS: If you Google for "search</p> <p>08 marketing firm," you'll find hundreds of people that</p> <p>09 provide search marketing services. And to understand</p> <p>10 the economic models of all of them is not possible.</p> <p>11 Q. (BY MS. BROWN) Did you know of others that</p> <p>12 were doing pay-for-performance search marketing</p> <p>13 exclusively?</p> <p>14 MR. COBURN: Objection; vague.</p> <p>15 THE WITNESS: It's -- you can Google</p> <p>16 "pay-for-performance search marketing" and, again, find</p> <p>17 many -- find many, frankly, that I still don't</p> <p>18 understand exactly how their businesses work. We -- one</p> <p>19 of them that we did look at early on was a company I</p> <p>20 think called Green Jelly, for example, that appears to</p> <p>21 offer -- it -- it appeared to offer services the -- the</p> <p>22 way that we had seen them -- you know, the way that we</p> <p>23 were thinking.</p>
2	093:25 - 094:07	<p>093:25 Q. (BY MS. BROWN) Let's go to Exhibit 106. What</p> <p>094:01 is this document?</p> <p>02 A. This is Wickfire's pay-for-performance FAQs.</p> <p>03 Q. And this is on the Web page?</p> <p>04 A. This is -- this is a Web page.</p> <p>05 Q. Okay. Does this appear to be a true and</p> <p>06 correct copy?</p> <p>07 A. Yes.</p>
3	102:24 - 104:08	<p>102:24 Q. Okay. In the fifth question down, it says,</p>

Exhibit 1

		<p>25 "Why should I work with you?" And it says that, "There 103:01 are very few marketing agencies willing to work on a 02 pay-for-performance basis." Do you know of other 03 agencies that are pay-for-performance based?</p> <p>04 A. Not as many. I haven't done -- I haven't done 05 extensive research on it, but the -- I mean, I -- I do 06 know of some that work on a pay-for-performance basis.</p> <p>07 Q. Okay. Can you name some of those for me?</p> <p>08 A. The one that I -- I first mentioned was that I 09 know that there's imwave. I know there's The Smartest 10 Search. I believe TriMax would be considered this. I 11 am absolutely not providing an exhaustive list. I know 12 that.</p> <p>13 Q. Those are the ones that come to mind?</p> <p>14 A. Yes.</p> <p>15 Q. And did you know anyone at any of these 16 agencies when you started Wickfire, LLC?</p> <p>17 A. No.</p> <p>18 Q. Do you know any of them now aside from Laura 19 and Josh?</p> <p>20 A. I mean, increasingly as -- as we work in the 21 space we meet -- we meet people.</p> <p>22 Q. Okay. The next sentence in -- in the answer to 23 No. 5 is (as read), "This is because to do so 24 effectively, an agency must have the ability to drive 25 cost-effective sales at volume, which isn't always 104:01 easy."</p> <p>02 Why do you say it's not always easy?</p> <p>03 A. Because it takes -- it takes search marketing 04 know-how to be able to do this.</p> <p>05 Q. Okay.</p> <p>06 A. I mean, this is -- is inherent in -- this is 07 sort of an inherent output of search marketing, you 08 know.</p>
4	208:18 - 208:25	<p>208:18 A. So right off the gate, there's a question of -- 19 I mean, you've got two -- two different value 20 propositions. Right? So in Ad 1 -- and, you know, at 21 some point, this is a -- this type of -- of ad analysis, 22 I hope, is -- I don't know. I mean, this is -- isn't 23 something that I've done ever. So hopefully, I'm -- 24 I'm -- I'm not a -- I'm sort of -- this is my first time 25 trying to do this type of analysis.</p>

5	379:13 - 381:16	<p>379:13 Q. What is Exhibit 606?</p> <p>14 A. It is an e-mail to me.</p> <p>15 Q. From who?</p> <p>16 A. It is an e-mail that purports to be from a John</p> <p>17 Patrick using the e-mail johnmpatrick@outlook.com.</p> <p>18 Q. Okay. Have you ever spoken to a John Patrick</p> <p>19 before?</p> <p>20 A. No.</p> <p>21 Q. Have you spoken to John Patrick after?</p> <p>22 A. No.</p> <p>23 Q. Okay. What is his -- what concerns does John</p> <p>24 Patrick raise in Exhibit 606?</p> <p>25 A. I -- let me read the e-mail. (As read), "Hi,</p> <p>380:01 I'm contacting you regarding your practice on Google</p> <p>02 AdWords to promote merchants via affiliate networks.</p> <p>03 Your maneuverings with your site thecoupon.co cannot be</p> <p>04 allowed to persist. It's not necessary to go into</p> <p>05 details as you know what I'm talking about (huge CPC</p> <p>06 increase" --</p> <p>07 THE REPORTER: I'm sorry. Huge?</p> <p>08 THE WITNESS: -- "(CPC increase,</p> <p>09 fraudulent click, etc.</p> <p>10 I'm not sure Google and affiliate networks</p> <p>11 would be happy to hear how you use their service. You</p> <p>12 definitely infringe a few" -- this is in there -- "you</p> <p>13 definitely infringe a few Google rules, and you know</p> <p>14 they don't like that kind of things. In addition, your</p> <p>15 site don't really respect Google AdWords rules. This</p> <p>16 one for example, and a link to a Google AdWords support</p> <p>17 link" -- which if you know where that goes, it can --</p> <p>18 you know, "furthermore you know that affiliate networks</p> <p>19 you work with (CJ, Shareasale, LinkShare, et cetera)</p> <p>20 wouldn't like to know how you promote their advertiser.</p> <p>21 I'm contacting you initially before talking to Google</p> <p>22 and Affiliate networks as I don't like to do this, but</p> <p>23 you need to stop doing such practices. Thanks for</p> <p>24 letting me know. John Patrick."</p> <p>25 Q. (BY MS. BROWN) Do you know what that site</p> <p>381:01 link -- that Google support document is?</p> <p>02 A. I do. It is to Google support page</p> <p>03 regarding -- well, it used to be then to a -- a policy</p> <p>04 regarding bridge pages.</p> <p>05 Q. What is a bridge page?</p>
---	-----------------	--

		<p>06 A. It's -- it's a page that would be only utilized 07 as an entry portal to other pages, but it's -- it's kind 08 of an absurd thing. It's -- I -- I don't know how to 09 put it. I -- I didn't really give much credibility to 10 it because it's -- all coupon sites -- no coupon sites 11 violate these pages. They are billion dollar sites that 12 are structured similar to TheCoupon.Co, and it's a 13 policy that Google -- you know, I mean, they happily 14 enforce -- you know, this is one of their site 15 standards. It's not -- it's not a sensible thing to 16 relate in something like this.</p>
--	--	---



Pay-for-Performance Marketing

Win-win marketing has never been easier.

Pay-for-Performance FAQs

How is pay-for-performance different from other types of search engine marketing?

With pay-for-performance marketing, there are no up front costs or major budgeting decisions to make. Instead, we are paid a percentage of all sales generated by our advertising after the fact.

Where will the ads show up?

We work with major SEM ad networks, which cover the following major search sites and networks:

- [Google](#)
- [Yahoo!](#)
- [Bing](#)
- [Ask.com](#)
- [Aol](#)

How are conversions tracked?

We work with these leading, reliable affiliate marketing networks to track the performance of the advertising we place on behalf of our clients:

- [Commission Junction \(CJ Affiliate by Conversant\)](#)
- [ShareASale](#)
- [PepperJam \(eBay Enterprise\)](#)
- [Impact Radius](#)
- [LinkShare](#)

What percentage of sales do your clients pay?

That depends on the fulfillment costs and the value of acquiring a new customer for a given business. For that business, acquiring a new customer creates follow-on sales, upsell and remarketing opportunities through channels like email, and the valuable marketing of customer word-of-mouth, which they derive 100% of the profit from. Therefore, we typically look for a revenue share equal to the profit made by the initial sale we drove.

By example, a company that sells shoes online might spend \$75 to fulfill a \$100 shoe order between the wholesale cost of the shoes, shipping costs, and marginal customer service costs. In this case we would seek a 25% payout on initial sales generated by our advertising.

Why should I work with you?

There are very few marketing agencies willing to work on a pay-for-performance basis. This is because to do so effectively, an agency must have the ability to drive cost-effective sales at volume, which isn't always easy.

Typical agencies prefer to be paid a set percentage of advertising spend or be given a fixed dollar budget that they build their costs into.

The problem with percentage of spend agreements is that the agency is incented to drive as much volume as possible regardless of their client's ROI. The problem with budgeted programs is that the agency is incented to spend as little as possible on actual advertising and simply pocket as much of the budget as they can. Neither of these models is in the client's best interest.

And Wickfire prides itself in being the best SEM provider among those few that work on a pay for performance basis. We bring decades of SEM experience from both the e-commerce and large agency spaces. Unlike many other paid search affiliates, we run broad campaigns designed to both improve conversion rates for your existing customers and increase product awareness to drive sales from brand new customers.

We've created best-of-class proprietary automation and workflow technologies uniquely suited to the pay-for-performance space that are typically not available to the small to medium sized e-commerce advertiser.

Additionally, we pride ourselves on being highly responsive to client needs and representing clients and their brands in a way that contributes to their overall business objectives.

Great, so how do I get started?

For more information on how Wickfire can improve your online presence, please email our CEO Chet Hall at chet@wickfire.com or call us at (512) 961-1233.

From: John Patrick <johnmpatrick@outlook.com>
To: chet@wickfire.com <chet@wickfire.com>; chet@wickfire.com
<chet@wickfire.com>; jon@wickfire.com" <jon@wickfire.com>
Sent: 2/7/2014 5:56:03 AM
Subject: Google Adwords practice

Hi,

I'm contacting you regarding your practice on Google Adwords to promote merchants via affiliate networks.

Your maneuverings with your site thecoupon.co can not be allowed to persist.

It's not necessary to go into details as you know what I'm talking about (huge CPC increase, fraudulent click, etc...)

I'm not sure Google and affiliate networks would be happy to hear how you use their service.

You definitely infringe a few Google rules and you know they don't like that kind of things.

In addition, your site don't really respect Google Adwords rules, this one for example : https://support.google.com/adwordspolicy/answer/190435?hl=en&ref_topic=1310864

Furthermore you know that affiliate networks you work with (CJ, Shareasale, Linkshare, etc..) wouldn't like to know how you promote their advertiser.

I'm contacting you initially before talking to Google and Affiliate networks as I don't like to do this, but you need to stop doing such practices.

Thanks for letting me know.

John Patrick

DECLARATION OF JO ANN RAMSAUR

1. My name is Jo Ann Ramsaur. I am of sound mind, over the age of twenty-one (21) years, have never been convicted of a felony or other crime involving moral turpitude, and I am capable of making this declaration.
2. Unless otherwise stated, I have personal knowledge of the matters set forth herein and could testify competently thereto if called upon to do so.
3. I have worked in the pay-for-performance search engine marketing industry since 2004. I co-founded the company eMall66.com with my late-husband, David Ramsaur.
4. From 1966 to 1971, I was an Assistant Professor of French at California Lutheran University. From 1978 to 1987, I was a Professor of French at Scottsdale Community College.
5. My son, Michael Ramsaur, also worked in the pay-for-performance search engine marketing industry. He founded the company Affiliate Shopping Net. Michael was one of the very first publishers to enter the affiliate marketing business in the early 1990s. Beginning in the early 2000s, Michael focused his efforts on search marketing, working strictly on a pay-for-performance model.
6. Michael's business grew and thrived for roughly two decades. But beginning at least in early 2014, Michael began experiencing very high-priced clicks on many of his campaigns. Michael spoke with me and his brother, Kevin, at length about this development. He shared with us that the cause of these high CPCs was a competitor that used the website thecoupon.co to artificially inflate his CPCs. Michael believed that Wickfire, LLC was responsible for the thecoupon.co ads.
7. Michael explained that when his ads were appearing in search results instead of Wickfire's, Wickfire would place an ad directing to thecoupon.co beneath his ad and use that ad to artificially inflate his CPC. Michael's budgets would be quickly exhausted and he was forced to pause his campaigns. Michael stated that once his ads were paused, thecoupon.co ad would disappear and Wickfire's direct-linking ad would reappear.
8. Michael communicated to Wickfire, Google, and the networks in an effort to stop Wickfire's conduct but these talks were unsuccessful. For example, between February 28, 2014, and April 9, 2014, Michael exchanged many e-mails with Brian Littleton, the president of ShareASale. These e-mails are attached as **Exhibit A**.

Exhibit 2

9. Following these communications, Michael became deeply depressed and shared with me that he believed Wickfire had ruined his business and that he had no means for generating a livable income. Being forced out of the only business he knew caused Michael to slip into despair.
10. On April 16, 2014, Michael resorted to suicide.
11. Following Michael's suicide, I have had access to his e-mail accounts, specifically, the account related to the e-mail address: mramsaaur@gmail.com. Attached as **Exhibit B** is a true and correct copy of an e-mail from Michael to Chet Hall that I found in that account, dated January 8, 2014.
12. Following Michael's death, I tried to keep his Google AdWords accounts going. I kept his same budget, max CPC, etc. but gradually all of his campaigns started losing clicks and conversions. I had to pause many of the campaigns because the CPC jumped and I knew that Wickfire was running thecoupon.co ads underneath Michael's ads. I believe that Mike's account was targeted by Wickfire and as a result, his campaigns eventually dwindled to nothing.
13. I believe that many of my campaigns have also been targeted by Wickfire. I am still investigating, but I believe that the following campaigns were targeted by Wickfire: PZI Jeans, Be Wild, PetStreet Mall, Advanced Response, Beacon South Beach Hotel, Good Morning Snore Solution, Canless Air, and Belt Outlet. I expect that, after further investigation, I will discover additional campaigns that were affected by Wickfire's conduct.
14. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed August 5, 2015.

DocuSigned by:
Jo Ann Ramsaur
C35DAF4F184349D...

JO ANN RAMSAUR

Logged In: Brian Littleton | Support Center | Admin CP | [Logout](#)[Home](#)[Tickets](#)[Teamwork](#)[Knowledgebase](#)[Downloads](#)[Troubleshooter](#)[News](#)[Users](#)[Manage Tickets](#)[Search](#)[New Ticket](#)[Predefined Replies](#)[Alerts](#)[Filters](#)[Reports](#)

>> Ticket Options

[Flag Ticket](#)[SLA Plan](#)[Mark Due](#)[Options](#)[Export](#)

>> Filter Tickets

[View All](#)[Filters](#)[Labels](#)[Support](#)[Open \(554\)](#)[Awaiting Reply](#)[Closed](#)[Escalated](#)[Sales](#)[Open \(5\)](#)[Awaiting Reply](#)[Closed](#)[Escalated](#)[Client Services](#)[Open \(127\)](#)[Awaiting Reply](#)[Closed](#)[Escalated](#)[Datafeeds](#)[Upgrades](#)[SPAM](#)

>> Manage » Search » Affiliate Click Fraud (ACG-479471)

[General](#)[Post Reply](#)[Forward](#)[Follow-Up](#)[Billing](#)[Add Notes](#)[Release](#)[History \(6\)](#)[Audit Log](#)[Edit](#)

Ticket ID	Department	Owner	Status	Priority	Due	Labels
ACG-479471	Support	Brian Littleton	Closed	Normal	Overdue	-- Unassigned --

ID Information

merchantID:**affiliateID:**

385702

Account Type:

Affiliate

Merchant Info

Setup Step:**Admin Notes:**[All Pages](#) 1 2 > [View All](#)[Template Group: affiliates](#) < Previous Ticket Next Ticket >

Author

Contents

Brian Littleton

Posted on: 09 Apr 2014 12:08 PM

STAFF

Mike,

There isn't anything we can do here on this in the short term. We may research and come up with policy in the future, but in the interim it is my opinion that this is an issue for Google to deal with as we cannot control how publishers bid using their tool.

Thanks,

Brian Littleton
ShareASale.com





E-mail: brian@shareasale.com**Michael Ramsaur**

Posted on: 03 Apr 2014 03:30 PM

Exhibit A

IP: 10.6.0.82

SAS000017

  Affiliate Tax
  Go Live

>> Online Staff

 Brian Littleton

USER

Hi Brian,

I was wondering if you were able to talk to Chet? I'd like to know before I make any new ads if he is going to continue to use his automated system?

Thanks,

Mike

E-mail: affiliateshoppingnet@yahoo.com

IP: 72.211.204.91


 Posted on: 20 Mar 2014 03:02 AM



Thank you, I appreciate it.

E-mail: affiliateshoppingnet@yahoo.com

IP: 72.211.204.91

 Posted on: 17 Mar 2014 07:32 PM



Mike,

I can talk to them about it but can't really promise anything here. It is something that would be in Google's realm to easily correct should they choose to do so... I'll see what I can do in the interim.

Thanks,

Brian Littleton
ShareASale.com

E-mail: brian@shareasale.com

IP: 192.168.1.38

 Posted on: 10 Mar 2014 02:57 PM



Hi Brian,

I agree with you that it would be impossible to police. I think there are a few others that do it, but the main person that does it is Chet. The others do it manually, while Curt has an automated system working to submit his high bid coupon ad underneath the top ad which is removed as soon as the top ad is knocked off and replaced by his legitimate ad. This man is bad for your network as I think the goal of an affiliate network would be to sign-up as many search publishers as possible, not just one who puts all the others out of business with unfair, unscrupulous practices. He is creating a lot of insecurity and discouragement amongst other search affiliates.

Is there any way you could contact him to let him know you do not approve of his tactics? Maybe a threat to throw him off the network would help.



Michael Ramsaur

USER



Brian Littleton

STAFF



Michael Ramsaur

USER

SAS000018

I am going to contact Google again and this time I am going to contact someone in a different department. I just think I was never able to talk to right person. If I do find someone that understands and will listen, can I have them contact you to verify what I am talking about? Maybe that will help give me more credibility.

Thanks,

Mike

E-mail: affiliateshoppingnet@yahoo.com

IP: 72.211.204.91



Michael Ramsaur

Posted on: 07 Mar 2014 04:43 PM



USER

Hi Brian,

I have a lot to say, I just need more time. I'll get back to you on Monday.

Thanks,

Mike

E-mail: affiliateshoppingnet@yahoo.com

IP: 72.211.204.91



Brian Littleton

Posted on: 05 Mar 2014 05:50 PM



STAFF

I wouldn't be surprised if they make that much off of click fraud, but this isn't click fraud in my opinion.

This is more along the lines of unethical manipulation of their system - and less about the actual clicks themselves. I would think they would be interested in that but if they are not it is going to be very hard for us to do something about it either.

I don't like the practice, and can speak to them about it - but policing EVERYONE from doing it would be impossible which would mean that I'd be singling one Affiliate out, while possibly ignoring others that are doing it (even though I don't know if there are, aren't, etc...)

Thanks,

Brian Littleton
ShareASale.com

E-mail: brian@shareasale.com

IP: 192.168.1.38



Michael Ramsaur

Posted on: 04 Mar 2014 02:55 PM



USER

Hi Brian,

I have about a year ago and they didn't do anything about it. Something along the lines of, if you are going to bid that much, then you should expect to pay that much. They did say it

SAS000019

was unethical what the other affiliate was doing. Working with Google is so frustrating. The last time I asked to speak to a manager, they wouldn't let me. I have given up on getting any help from Google. The AdWords support team just don't understand affiliate marketing very well. That's what my experience has been. They get really confused every time I brought up what was happening. They also have an incentive to not make it stop, they make more money. I heard they make 2 billion off of click fraud every year.

Thanks,

Mike

E-mail: affiliateshoppingnet@yahoo.com

IP: 72.211.204.91



Brian Littleton

STAFF

Posted on: 04 Mar 2014 12:21 PM



Thanks Mike - I understand.

I assume that you've already attempted to contact Google with regards to the practice, and do you know if they have an official stance on that type of activity?

Thanks,

Brian Littleton
ShareASale.com



Michael Ramsaur

USER

E-mail: brian@shareasale.com

IP: 192.168.1.38

Posted on: 04 Mar 2014 03:38 AM



Hi Brian,

Thanks for your quick response. it's not legitimate in the sense that it's only purpose is to artificially drive up my costs. He has no intention on keeping the ad running, because he takes it down after I pause my ad. He then resumes his direct linking ad and pauses his coupon ad. He is monopolizing most of the open trademark ads. He is also doing it on CJ and LinkShare. Instead of trying to outbid you like everyone else, he has this automated system that makes it impossible to compete with. Like he said, he doesn't want there to be an incentive for anyone to overbid. What he omitted is the reason he does it, which is to defend his position and not allow any other affiliate to compete for it. I finally reached my breaking point with this guy. I am scared to log-in to my AdWords account everyday, wondering if I am going to have clicks that go from \$0.10 to \$30 again.

Thanks,

Mike


E-mail: affiliateshoppingnet@yahoo.com

IP: 72.211.204.91



SAS000020

Brian Littleton

 Posted on: 03 Mar 2014 01:38 PM



STAFF

Hey Mike,

Can you comment on why you think it is not a legitimate ad? Is the second ad a misleading ad?

I think I understand the scenario you are describing but want to collect a few more facts.

Thanks,


Brian Littleton
ShareASale.com

E-mail: brian@shareasale.com

IP: 192.168.1.38



Michael Ramsaur

 Posted on: 28 Feb 2014 03:19 PM



USER

Hi,

I have been experiencing really bad click fraud from one of your affiliates that has cost me well over \$10,000 and I have reached my breaking point.

His name is Chet Hall

E-mail - chet@wickfire.com
Website - thecoupon.co

Instead of trying to outbid you like everyone else when your ad is showing, he will place one of his thecoupon.co ads below your ad so you end up paying over \$1.00/click when you were only paying 0.20/click the day before. Sometimes I ended up paying \$30/click! The ad is only meant to artificially raise your clicks, it is not a legitimate ad. Once you stop your ad, he stops his coupon ad, so his direct linking ad starts showing again. He stops his coupon ad, because he doesn't want to pay \$5/click either. He knows no one can make a profit with these types of ridiculous click prices. He is monopolizing most of the open trademark ads/keywords. He has an automated system, so when you outbid him and your ad starts showing up, his coupon ad will automatically show below your ad and you have to pay over \$1.00/click. He is not only doing this on SAS, but also CJ and LinkShare. I e-mailed him and asked him to stop doing what he is doing and he has never stopped.

It's not fair that one affiliate is monopolizing the entire open trademark/keyword marketplace. It would be different if he were using the regular Adwords bidding system to do it, but he's using click fraud to do it. These coupon ads are not meant to make money, just to force other affiliates to pay higher click rates. This is happening to other affiliates as well.

I have attached some screenshots of my click rate prices on Google and how they went up after he did this to me. If you type in the Nerd Block on Google, you will notice he has the ad

SAS000021

without his coupon ad showing. I had to pause mine last night, because he had his coupon ad below me. He is using his automated system to defend his direct ads, so no other affiliate can outbid him. I am hoping you can do something about this as soon as possible. I admit that I did what he did to me a few times out of complete frustration after I figured out what he was doing to me. I have decided to never do it again, because I don't want to resort to dirty tactics to compete. Below is Chet's response to me when I contacted him about the situation. He admits to what he is doing.

Hi Mike,

I'm a big believer in trying to build cordial relationships with competitors, since this is a very small professional space and you never know what circumstances you're going to meet someone in in the future.

I apologize if you feel like there's a PPC war going on. We're not fighting any wars on our end. We're not targeting you personally in any fashion, and other than the campaign list you've sent, I don't have any information about your company or know how we'd identify your ads in search engines.

Our bidding systems are automated, and don't (and won't) use any proscribed methods to compete with other affiliates, though we do spend a lot of time doing data analysis and refining our logic.

Your comment "That's how this game works, \$1000 bids win the ad," is definitely not one that abide by, and seems to me to be a perversion of Google's paid search auction model. Not to say that we haven't tried it, but we were eventually forced us to change our search strategies because of the huge amount of highly-effective click fraud we started seeing from certain other affiliates when we overbid on keywords in that manner.

We do utilize non-direct linked ads on keywords which historically have not had them, and that added competition to those key keyword marketplaces is exactly what was necessary to prevent affiliate overbidding and remove the huge incentive for affiliate click fraud. Even as we began utilizing our own landing pages, instead of focusing solely on direct search, we have seen many hundreds of clicks per day from certain affiliates who basically seem to treat click fraud as a full time occupation. Given that, we entirely stopped overbidding on keyword terms, which historically has been pretty common in this space.

As far as the campaign list you sent goes, we currently manage over a thousand paid search campaigns and trying to divvy up affiliate real estate when neither of us owns anything and there are thousands of other affiliates involved isn't realistic.

Good luck,

Chet

Brown, Sara Ann

From: Mike Ramsaur <mramsaaur@gmail.com>
Sent: Wednesday, August 05, 2015 1:47 AM
To: Brown, Sara Ann
Subject: Fwd: PPC War

----- Forwarded message -----

From: **Mike Ramsaur** <mramsaaur@gmail.com>
Date: Wed, Jan 8, 2014 at 6:02 PM
Subject: Re: PPC War
To: Chet Hall <chet@wickfire.com>

Hi Chet,

I apologize if I was accusing you of doing something you were not doing. So what you have done is set up a system to prevent other affiliates from overbidding? When I overbid on Homemade Gourmet and took over the ad today, your Coupon.co ad appears withing minutes when it wasn't there before. I also noticed that the direct ad was taken back by this affiliate:

<http://ad-tk24.com%3Fid%3D2200099%26kw%3D1999340324876387350%26m%3De%26d%3Dc%26c%3D29190761095%26p%3D1t1>

Once the ad was taken back, your Coupon.co ad disappeared. Sounds like it's your direct ad and you are protecting it with you Coupon.co ads? You are artificially raising my clicks to \$5 to keep me from overbidding. I feel it's a form of click fraud. I don't feel overbidding is a perversion, because it's the only way to keep the ad. As you probably know, Google changed there policy years ago and only allowed one ad per URL which created the overbidding.

I also noticed that most of the open search ads have been taken by this affiliate:

<http://i1j1i.com>

Are these your ads?

So you are experiencig click fraud? The other affiliates are clicking on your Coupon.co ads?

If I hurt your business by taking over the ads that you had, I am sorry. I wasn't trying to be greedy, I don't have a lot of ads anymore, because most of the other ads are taken by other affiliates.

Mike

On Sat, Jan 4, 2014 at 6:12 AM, Chet Hall <chet@wickfire.com> wrote:
Hi Mike,

Exhibit B

I'm a big believer in trying to build cordial relationships with competitors, since this is a very small professional space and you never know what circumstances you're going to meet someone in in the future.

I apologize if you feel like there's a PPC war going on. We're not fighting any wars on our end. We're not targeting you personally in any fashion, and other than the campaign list you've sent, I don't have any information about your company or know how we'd identify your ads in search engines.

Our bidding systems are automated, and don't (and won't) use any proscribed methods to compete with other affiliates, though we do spend a lot of time doing data analysis and refining our logic.

Your comment "That's how this game works, \$1000 bids win the ad," is definitely not one that abide by, and seems to me to be a perversion of Google's paid search auction model. Not to say that we haven't tried it, but we were eventually forced to change our search strategies because of the huge amount of highly-effective click fraud we started seeing from certain other affiliates when we overbid on keywords in that manner.

We do utilize non-direct linked ads on keywords which historically have not had them, and that added competition to those key keyword marketplaces is exactly what was necessary to prevent affiliate overbidding and remove the huge incentive for affiliate click fraud. Even as we began utilizing our own landing pages, instead of focusing solely on direct search, we have seen many hundreds of clicks per day from certain affiliates who basically seem to treat click fraud as a full time occupation. Given that, we entirely stopped overbidding on keyword terms, which historically has been pretty common in this space.

As far as the campaign list you sent goes, we currently manage over a thousand paid search campaigns and trying to divvy up affiliate real estate when neither of us owns anything and there are thousands of other affiliates involved isn't realistic.

Good luck,

Chet

On Friday, January 3, 2014 at 11:11 PM, Mike Ramsaur wrote:

If you guys keep on doing these dirty tactics, I am going to contact SAS and let them know what you are doing. If you are pissed that I out bid you, that's not my issue. That's how this game works, \$1000 bids win the ad. You guys have been doing this for a long time and someone needs to tell them.

On Fri, Jan 3, 2014 at 6:33 PM, Mike Ramsaur <mramsaaur@gmail.com> wrote:

Hi Chet, I was wondering if you would be interested in sharing the ads we have been fighting over?

You get:

Pro Compression
e4Hats
EverestGear.com
GoldenFlax.com
Lashem
Rubber Chicken Cards
48HoursLogo.com

And I get:

HomemadeGourmet.com

Zen Water Systems

ArmyNavyShop

Patriot Depot

FreeMasonStore.com

Love-Scent

Headline Shirts

We can split up more if you want to? Could you please not put your 3 dollar bids below anymore of my ads? If you agree, I will not do it to you anymore. I understand that you need to earn a living just like me, but I believe it's in the best interest for both of us to share then to fight.

Best regards,

Mike